

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 19, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

R.W., individually and on behalf of
his marital community,

Plaintiff,

v.

COLUMBIA BASIN COLLEGE, a
public institution of higher education;
LEE THORNTON, in his individual
capacity; REBEKAH WOODS, in
her official capacity; and RALPH
REAGAN, in his official and
individual capacities,

Defendants.

NO: 4:18-CV-5089-RMP

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT

BEFORE THE COURT is Defendants' Motion for Partial Summary

Judgment, ECF No. 128. The Court heard oral argument by video conference on
October 14, 2021. Plaintiff R.W. was represented by Bret J. Uhrich and Eric B.
Eisinger. Defendants Columbia Basin College, Lee Thornton, and Ralph Reagan
were represented by Jacob E. Brooks and Carl P. Warring from the Attorney General

ORDER RESOLVING DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 1

1 of Washington's Office. The Court has considered the parties' arguments, briefing
2 and the record, and is fully informed.

3 **BACKGROUND**

4 ***Relevant Facts*¹**

5 R.W. was enrolled in Columbia Basin College's ("CBC") nursing program,
6 completing 177 credit hours between 2011 and 2017, and needing to complete only
7 one more quarter of classes to graduate. ECF No. 37-4. He previously was
8 diagnosed with a seizure disorder, chronic back pain, and depression. ECF No. 37-
9 24 at 5. In February of 2017, R.W. experienced more frequent seizures,
10 depression, and anger issues. *Id.*; *see also* ECF No. 37-12. During this time, R.W.
11 had homicidal ideations about three of his instructors at CBC, in which he
12 imagined killing them by lighting their offices on fire and attacking them with
13 saws. ECF Nos. 47-5, 35-2 at 48.

14 R.W. reported his medical issues to Dr. Michael Cabasug, his primary care
15 physician, on February 28, 2017, and scheduled an appointment for March 6. ECF
16 No. 37-22 at 10. Between February 28 and March 6, R.W. continued to attend his
17 nursing classes at CBC without incident. *Id.* At the March 6 appointment, R.W.
18

19

¹ Given that the relevant facts for the present motion largely overlap with those
20 considered in prior motions for this case, the Court adopts many of the same
21 background facts from its previous order resolving the parties' cross-motions for
summary judgment. *See* ECF No. 83 at 2–7.

1 told Dr. Cabasug that he had been feeling overwhelmed, helpless, and anxious
2 because he was extremely stressed from school. ECF No. 37-24 at 5. R.W. stated
3 that he was having trouble sleeping because of his stress from school, which Dr.
4 Cabasug noted was likely the cause of an increase in epileptic episodes that R.W.
5 had been experiencing over the previous several weeks. *Id.* R.W. also shared with
6 Dr. Cabasug his concerns about his violent ideations. ECF No. 37-27.

7 Dr. Cabasug referred R.W. to Lourdes Hospital's Crisis Response
8 Counseling Center for a mental health evaluation. *Id.* Araceli Perez, a crisis
9 responder for Lourdes, met with R.W. at Dr. Cabasug's office. ECF No. 35-1 at 9–
10 10. R.W. reported his homicidal thoughts to Ms. Perez, identified the specific
11 professors about whom he had homicidal thoughts, and told her that his thoughts
12 were triggered by the bad grades and feedback that they gave him. *Id.* at 19. He
13 also stated the ways that he imagined killing his professors. *Id.* at 38.

14 Following this evaluation, R.W. agreed to voluntarily admit himself for
15 inpatient counseling. ECF No. 37-27 at 2. R.W. initially wanted to leave inpatient
16 treatment on March 9 but was convinced to stay an extra day and was discharged
17 on March 10. ECF No. 35-1 at 33; ECF No. 37-12 at 1. Around this time, R.W.
18 admitted that he began to realize he would not be able to complete Winter Quarter

19
20
21

1 2017, which ended on March 23, 2017.² ECF Nos. 34 at 2, 130-2 at 9–10. He
2 could not re-enroll in the nursing program until the following Winter Quarter
3 because of the nursing program’s progressive schedule, which requires the
4 completion of certain classes offered only once a year before moving on to the
5 following courses. ECF No. 34 at 1–2.

6 Defendants allege that crisis responder Ms. Perez has a duty to warn people
7 if her patients express homicidal ideations about them. ECF No. 35-1 at 37. After
8 R.W. told Ms. Perez about his homicidal thoughts, she contacted the Richland
9 Police Department, which then notified CBC’s campus security on the morning of
10 March 7. ECF No. 37-10 at 2. CBC’s campus security warned the professors
11 identified by R.W. about R.W.’s thoughts. *Id.* Defendant Ralph Reagan, Assistant
12 Dean of Student Conduct for CBC, also was informed about R.W.’s thoughts.

13 _____
14 ² The parties dispute the circumstances surrounding R.W.’s decision not to
15 complete Winter Quarter 2017. Defendants assert that R.W. admitted in his
16 deposition testimony that he realized on March 9, 2017, that the “additional time”
17 he had missed from classes, due to being admitted at Lourdes, meant that he would
18 not be able to finish the semester. ECF No. 142 at 6; *see also* ECF No. 130-2 at 9–
19 10. Plaintiff argues that Defendants mischaracterize his deposition testimony and
20 denies that he ever made such a concession. Rather, Plaintiff contends that his
21 decision not to complete Winter Quarter 2017 was premised on his conclusion that
CBC’s Student Conduct process would take too long for him to be able to catch up
on the classes that he was missing due to the trespass order. *See* ECF No. 136 at
10–11; *see also* ECF No. 138 at 1–2.

1 ECF No. 37-8 at 5. Mr. Reagan was told that R.W. “admitted to having homicidal
2 ideations toward staff at CBC, talking about lighting offices on fire and attacking
3 people with saws.” ECF Nos. 37-10 at 10, 37-8 at 5. Additionally, Mr. Reagan
4 was told that R.W. was at Lourdes “getting help and may not be an immediate
5 threat.” ECF No. 37-10 at 10.

6 The same day that Mr. Reagan learned of R.W.’s homicidal ideations, Mr.
7 Reagan issued R.W. an interim trespass letter pending an investigation. ECF No.
8 37-9 at 1. According to Mr. Reagan, R.W.’s thoughts violated the school’s Student
9 Code of Conduct. The Student Code of Conduct prohibits “Abusive Conduct,”
10 which is defined under the Washington Administrative Code as:

11 Physical and/or verbal abuse, threats, intimidation,
12 harassment, online harassment, coercion, bullying,
13 cyberbullying, retaliation, stalking, cyberstalking, and/or
14 other conduct which threatens or endangers the health or
15 safety of any person or which has the purpose or effect of
16 creating a hostile or intimidating environment.

17 *Id.*; see also Wash. Admin. Code § 132S-100-205. Mr. Reagan trespassed R.W.
18 from CBC’s Richland and Pasco campuses stating that R.W.’s actions had the
19 “effect of creating a hostile or intimidating environment.” ECF No. 37-19 at 1.
20 Mr. Reagan sent R.W. a follow up letter on March 8, 2017, which scheduled a
21 March 16 meeting between R.W. and Mr. Reagan to discuss the trespass and to
give R.W. a chance to respond to the allegations. ECF No. 37-11.

1 Meanwhile, R.W. appealed his interim trespass from campus to the Student
2 Appeals Board (“Board”) at CBC. ECF No. 35-4 at 166. On March 14, the Board
3 affirmed Mr. Reagan’s decision and upheld the interim trespass, barring R.W. from
4 attending his classes. ECF No. 37-13. R.W. appealed the Board’s decision to the
5 Interim President of CBC, Defendant Lee Thornton, on March 22. ECF No. 37-14.
6 On April 19, Mr. Thornton lifted the restriction as to CBC’s Pasco campus but left
7 the restriction in place for the Richland campus. ECF No. 37-15. Mr. Thornton’s
8 modifications did not allow R.W. to attend his nursing classes because the nursing
9 program is conducted at the Richland campus. ECF No. 37-8 at 7.

10 As the interim trespass was being appealed, CBC and R.W. also participated
11 in the student conduct process to review the allegations made against R.W. ECF
12 No. 37-16. On March 22, CBC held a meeting at which Mr. Reagan and R.W.
13 discussed the allegations. *Id.* At the meeting, Mr. Reagan requested access to
14 R.W.’s medical records to assess whether R.W. committed any abusive conduct, as
15 defined by the Washington Administrative Code, which is incorporated into CBC’s
16 Student Code of Conduct. ECF No. 37-22 at 7. Mr. Reagan received R.W.’s
17 medical records from Dr. Cabasug as well as a letter written by Dr. Cabasug
18 explaining that R.W.’s homicidal thoughts were out of character for him. ECF
19 Nos. 35-4 at 53–54, 72; 37-21; 37-33. Mr. Reagan also talked to the professors
20 identified in R.W.’s homicidal thoughts, who all expressed that R.W.’s thoughts
21

1 made them afraid of R.W.'s presence in classes. ECF Nos. 35-4 at 130, 137-38;
2 37-7.

3 On April 20, 2017, Mr. Reagan issued R.W. a letter stating that he found
4 R.W. responsible for violating CBC's Student Code of Conduct. ECF No. 37-16.
5 The letter stated that, even though R.W. did not intend to intimidate anybody
6 through his actions, his actions had that effect and therefore violated the school's
7 regulations. *Id.* Mr. Reagan later clarified that R.W.'s violent thoughts were the
8 conduct that violated the school's code. ECF No. 35-4 at 123.

9 The sanctions imposed by Mr. Reagan for R.W.'s conduct included the
10 continuation of the trespass order until R.W. (1) successfully re-enrolled in the
11 nursing program, (2) participated in mental health counseling, and (3) completed a
12 mental health evaluation in October of 2017. ECF No. 37-16 at 1.³ Through
13 counsel, R.W. appealed Mr. Reagan's decision and imposition of sanctions to the
14 Student Appeals Board on May 4, 2017. ECF No. 37-17. The Board unanimously
15 upheld Mr. Reagan's imposition of sanctions on May 24, 2017. ECF No. 37-18.
16 R.W. appealed the Board's decision to Mr. Thornton on June 7, 2017. ECF No.
17

18 ³ According to Mr. Reagan, CBC's "process for determining violations of the
19 student code of conduct and sanctions has [since] been altered." ECF No. 131 at
20 1-2. Specifically, the Student Conduct Board is now responsible for making
21 violation determinations "where expulsions or suspensions for ten or more days is
a possible outcome." *Id.* at 2.

1 37-19. Mr. Thornton affirmed the Board's decision on June 12, 2017. ECF No.

2 37-20.

3 On July 8, 2021, approximately three years after the event in question, Mr.
4 Reagan issued R.W. a follow-up letter, stating that the sanctions imposed on April
5 20, 2017, became null and void when R.W. did not enroll in Winter Quarter 2018.
6 ECF Nos. 131 at 137–38, 129 at 8. R.W. disputes this fact, arguing that the
7 sanctions were not withdrawn until the issuance of Mr. Reagan's letter on July 8,
8 2021. ECF No. 136 at 12–13. R.W. further argues that Mr. Reagan lacks authority
9 to determine whether he can return to the nursing program. *Id.* Defendants argue
10 that R.W. no longer has any sanctions imposed upon him and is free to apply for
11 reenrollment at CBC. ECF No. 129 at 8. In response, R.W. notes that he was
12 failed in all of his classes in Winter Quarter 2017, “rendering him ineligible to
13 return pursuant to the requirements of the nursing student handbook.” ECF No.
14 136 at 12–13 (citing ECF Nos. 37-4, 139).

15 ***Procedural History***

16 R.W. filed a complaint against CBC, Mr. Reagan, and Mr. Thornton on May
17 25, 2018. ECF No. 1. R.W. asserts a 42 U.S.C. § 1983 claim, arguing that all
18 Defendants violated his free speech rights under the First Amendment and the

1 Equal Protection Clause of the Fourteenth Amendment. *Id.* at 7.⁴ R.W. asks for an
2 injunction lifting the trespass order, enjoining Defendants from requiring R.W. to
3 retake all of his nursing classes, and preventing Defendants from requiring R.W. to
4 provide regular reports of his medical treatment as a condition of re-enrollment.

5 *Id.* at 9. He also asks for compensatory, punitive, and nominal damages, attorneys'
6 fees, as well as "all other relief the [C]ourt deems just and equitable." *Id.* at 9–10.

7 On October 4, 2019, this Court issued an Order Granting in Part Plaintiff's
8 Motion for Summary Judgment with respect to liability on his claim under 42
9 U.S.C. § 1983, finding that the sanctions CBC imposed violated R.W.'s First
10 Amendment free speech rights. ECF No. 83 at 22, 29. This Court denied in part
11 Plaintiff's motion with respect to liability on his claims under the Americans with
12 Disabilities Act, the Rehabilitation Act, and the Washington Law Against
13 Discrimination. *Id.* at 29–30. The Court also denied Defendants' Motion for
14 Summary Judgment in its entirety, including claims for qualified immunity by
15 Defendants Ralph Reagan and Lee Thornton. *Id.* at 22, 29. Mr. Reagan and Mr.
16 Thornton appealed the portion of the Court's order denying them qualified
17 immunity. ECF No. 90.

18

19 ⁴ R.W. also claims that CBC violated his rights under the Americans with
20 Disabilities Act and the Rehabilitation Act, and he claims that all Defendants
21 violated his rights under the Washington Law Against Discrimination. ECF No. 1
at 8.

1 On March 31, 2021, the Ninth Circuit reversed the denial of qualified
2 immunity, holding that R.W.’s First Amendment right “was not clearly
3 established.” ECF No. 121 at 2. The Ninth Circuit did not reach the issue of
4 whether CBC’s actions amounted to a constitutional violation of R.W.’s First
5 Amendment rights. Defendants now seek partial summary judgment on R.W.’s
6 claim for injunctive relief under §1983.

7 **LEGAL STANDARD**

8 A court may grant summary judgment where “there is no genuine dispute as
9 to any material fact” of a party’s prima facie case, and the moving party is entitled
10 to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Celotex Corp. v.*
11 *Catrett*, 477 U.S. 317, 322–23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A
12 genuine issue of material fact exists if sufficient evidence supports the claimed
13 factual dispute, requiring “a jury or judge to resolve the parties’ differing versions
14 of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809
15 F.2d 626, 630 (9th Cir. 1987). A key purpose of summary judgment “is to isolate
16 and dispose of factually unsupported claims.” *Celotex*, 477 U.S. at 324.

17 The moving party bears the burden of showing the absence of a genuine
18 issue of material fact, or, in the alternative, the moving party may discharge this
19 burden by showing that there is an absence of evidence to support the nonmoving
20 party’s prima facie case. *Id.* at 325. The burden then shifts to the nonmoving party
21 to set forth specific facts showing a genuine issue for trial. *Id.* at 324. The

1 nonmoving party ““may not rest upon the mere allegations or denials of his
2 pleading, but his response, by affidavits or as otherwise provided . . . must set forth
3 specific facts showing that there is a genuine issue for trial.”” *Id.* at 322 n.3
4 (quoting Fed. R. Civ. P. 56(e)).

5 The Court will not infer evidence that does not exist in the record. *See*
6 *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89, 110 S. Ct. 3177, 111 L. Ed.
7 2d 695 (1990). The Court will “view the evidence in the light most favorable” to
8 the nonmoving party. *Newmaker v. City of Fortuna*, 842 F.3d 1108, 1111 (9th Cir.
9 2016). “The evidence of the non-movant is to be believed, and all justifiable
10 inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
11 242, 255 (1986).

12 DISCUSSION

13 Defendants move for partial summary judgment on R.W.’s request for
14 prospective injunctive relief regarding his First Amendment claim under 42 U.S.C.
15 § 1983. ECF No. 128. Specifically, Defendants argue that (1) Eleventh
16 Amendment immunity bars suit against Defendants; (2) the *Ex parte Young*⁵
17 doctrine does not apply because Plaintiff’s claim for injunctive relief is moot and
18 no longer redressable; and (3) the Court should reconsider its previous liability

21 ⁵ *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908).

1 finding in light of *Mahanoy Area School Dist. v. B.L. by and through Levy*, ____
2 U.S. ___, 141 S. Ct. 2308, 210 L. Ed. 2d 403 (2021).

3 **I. Eleventh Amendment Immunity**

4 Defendants first argue that they are immune from suit under the Eleventh
5 Amendment of the United States Constitution, which provides the following:

6 The Judicial power of the United States shall not be
7 construed to extend to any suit in law or equity,
8 commenced or prosecuted against one of the United States
by Citizens of another State, or by Citizens or Subjects of
any Foreign State.

9 U.S. Const. amend XI. The Eleventh Amendment has been interpreted to
10 immunize states from lawsuits for private damages or other retrospective relief
11 brought in federal court by its own citizens or citizens of other states. *See*
12 generally *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437, 124 S. Ct. 899, 157 L.
13 Ed. 2d 855 (2004); *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 267–68,
14 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997); *Milliken v. Bradley*, 433 U.S. 267, 288–
15 90, 97 S. Ct. 2749, 53 L. Ed. 2d 745 (1977). An entity invoking Eleventh
16 Amendment immunity bears the burden of proving it is entitled to the defense.
17 *Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 928 (9th Cir. 2017).

18 There are two exceptions to state sovereign immunity under the Eleventh
19 Amendment: (1) a state may consent to being sued and (2) Congress may abrogate
20 state sovereign immunity by appropriate legislation. *Virginia Off. for Prot. and*
21 *Advoc. v. Stewart*, 563 U.S. 247, 253–54, 131 S. Ct. 1632, 179 L. Ed. 2d 675

1 (2011). Defendants assert, and Plaintiff does not appear to challenge, that
2 Washington State has neither waived, nor has Congress abrogated, state sovereign
3 immunity pursuant to specific statutes for purposes of Plaintiff's § 1983 claim.
4 ECF No. 128 at 10.⁶

5 It is widely recognized that the Eleventh Amendment precludes private
6 damages or suits for injunctive relief against state agencies. *Sato*, 861 F.3d at 928.
7 In its reply, Defendants argue that R.W. "does not attempt to rebut that CBC is
8 entitled to Eleventh Amendment immunity" as a state agency and that R.W. has
9 therefore "abandon[ed] the uncontested issue." ECF No. 142 at 7 (citing *Jenkins v.*
10 *Cnty. of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005)). In line with *Sato*, the
11 burden of asserting Eleventh Amendment immunity rests with Defendant CBC so
12 this Court must analyze its alleged status as a "state agency." The following five
13 factors help guide the determination of whether a government entity is an arm of
14 the state:

- 15 (1) Whether a money judgment would be satisfied out of
16 state funds, (2) whether the entity performs central
17 government functions, (3) whether the entity may sue or
be sued, (4) whether the entity has the power to take
property in its own name or only the name of the state, and
18 (5) the corporate status of the entity.

19 _____
20 ⁶ 42 U.S.C. § 1983 does not override a state's immunity from suit in federal court,
as guaranteed by the Eleventh Amendment. *Quern v. Jordan*, 440 U.S. 332, 345,
21 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979).

1 *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 250–51 (9th Cir. 1992)
2 (quoting *Mitchell v. Los Angeles Community Coll. Dist.*, 861 F.2d 198, 201 (9th
3 Cir. 1988), *cert denied*, 490 U.S. 1081, 109 S. Ct. 2102, 104 L. Ed. 2d 663 (1989)).

4 CBC highlights two sources of authority to support its argument that it is a
5 state agency. First, CBC cites a Washington statute providing that “community
6 colleges are . . . an independent, unique, and vital section of our state’s higher
7 education system, separate from both the common school system and other
8 institutions of higher learning.” RCW 28B.50.020(7). Second, CBC cites
9 Plaintiff’s complaint, which describes CBC as “a Washington public institution of
10 higher education under the Revised Code of Washington (RCW) 28B.” ECF No. 1
11 at 2.

12 Additionally, the Washington State Supreme Court has concluded that “the
13 legislature intended community colleges, and the operation thereof, to be a state
14 function.” *Centralia Coll. Educ. Ass’n v. Board of Trustees of Community Coll.*
15 *Dist. No. 12*, 82 Wash. 2d 128, 133, 508 P.2d 1357 (1973). Moreover, two
16 separate decisions in this district, albeit unpublished, have concluded that CBC
17 qualifies as a state agency for purposes of the Eleventh Amendment. *See Cepeda*
18 *v. Columbia Basin Community Coll.*, No. 12-cv-5026-TOR, 2012 WL 6042339, at
19 *2 (E.D. Wash. Dec. 4, 2012); *see also Arshad v. Columbia Basin Community*
20 *Coll.*, No. cv-05-5019-LRS, 2006 WL 1455656, at *1–2 (E.D. Wash. May 25,
21 2006).

1 In its statement of supplemental authority, Defendants note that a monetary
2 judgment against CBC “would be satisfied out of state funds[,]” although
3 Defendants fail to cite any authority for this assertion. ECF No. 144 at 3.
4 Defendants also contend that CBC “performs a central government function of
5 education as determined by the legislature” and “has the corporate status of a state
6 agency as created by statute.” *Id.* (citing RCW 28B.50.0002 [sic])⁷; *see also*
7 *Centralia Coll. Educ. Ass'n*, 82 Wash. 2d at 135 (“Without question, the legislature
8 intended community college districts to be state agencies.”). The Court concludes
9 that Defendants have met the requisite showing that CBC is a state agency entitled to
10 Eleventh Amendment immunity from suit for Plaintiff’s § 1983 claim. Accordingly,
11 Plaintiff’s claim for injunctive relief under § 1983 against Defendant Columbia
12 Basin College is dismissed with prejudice. In the instant motion, Defendants do not
13 move for summary judgment of Plaintiff’s claims against CBC based on the
14 Americans with Disabilities Act and the Rehabilitation Act or the Washington Law
15 Against Discrimination. Accordingly, CBC remains a party to this action for those
16 separate claims.

17 **II. Applicability of the *Ex parte Young* Doctrine to Individual Defendants**

19
20
21

⁷ Defendants appear to have made an error in citing to RCW 28B.50.0002. *See*
ECF No. 144 at 3. The Court presumes that Defendants meant to cite to RCW
28B.50.020 which sets out the purpose of Washington State’s Community and
Technical College Act of 1991.

1 In line with CBC's Eleventh Amendment immunity, Defendants Ralph
2 Reagan and Lee Thornton argue that they are equally entitled to immunity as state
3 officials sued in their official capacity. ECF No. 128 at 10 (citing *Lund v. Cowan*,
4 5 F.4th 964, 969 (9th Cir. 2021)). However, the Eleventh Amendment does not
5 preclude a lawsuit challenging the constitutionality of a state official's actions. *Ex*
6 *parte Young*, 209 U.S. 123, 167–68, 28 S. Ct. 441, 52 L. Ed. 714 (1908). The *Ex*
7 *parte Young* doctrine "has been accepted as necessary to permit the federal courts
8 to vindicate federal rights and hold state officials responsible to 'the supreme
9 authority of the United States.'" *Pennhurst State Sch. & Hosp. v. Halderman*, 465
10 U.S. 89, 105, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984) (quoting *Ex parte Young*, 209
11 U.S. at 160).

12 In determining whether the *Ex parte Young* doctrine applies, the relevant
13 inquiry is whether the complaint "alleges an ongoing violation of federal law and
14 seeks relief properly characterized as prospective.'" *Koala v. Khosla*, 931 F.3d
15 887 (9th Cir. 2019) (quoting *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535
16 U.S. 635, 645, 122 S. Ct. 1753, 152 L. Ed. 2d 871 (2002)). Here, Defendants
17 assert that the sanctions against R.W. have been withdrawn so there is no ongoing
18 violation of federal law. ECF No. 128 at 11. In response, Plaintiff counters that
19 "Defendants fail to remedy the previously identified consequences of their
20 unlawful conduct including expulsion from the program, failing R.W. in his
21 classes, and suspending his financial aid." ECF No. 135 at 2. Separately, Plaintiff
ORDER RESOLVING DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 16

1 argues that, despite Defendants' "voluntary cessation" of the sanctions originally at
2 issue, the unlawful conduct may rise again "absent the imposition of an
3 injunction." *Id.* at 11. Therefore, the relevant inquiry for the injunctive relief
4 Plaintiff seeks concerns mootness, voluntary cessation, and redressability.

5 **A. Mootness**

6 "Article III of the Constitution limits federal-court jurisdiction to 'Cases'
7 and 'Controversies.'" *Massachusetts v. EPA*, 549 U.S. 497, 516, 127 S. Ct. 1438,
8 167 L. Ed. 2d 248 (2007). A case becomes moot where there are no longer any
9 live issues to resolve or where the parties lose a "legally cognizable interest in the
10 outcome." *Flint v. Dennison*, 488 F.3d 816, 823 (9th Cir. 2007). However,
11 mootness "is a flexible justiciability doctrine" and does not apply so long as the
12 court "retains the ability to 'fashion some form of meaningful relief.'" *Id.* (quoting
13 *Dream Palace v. County of Maricopa*, 384 F.3d 990, 1000 (9th Cir. 2004)).

14 Based on his complaint, R.W. broadly seeks prospective injunctive relief
15 against CBC, and against Mr. Reagan and Mr. Thornton in their official capacities,
16 "to enjoin their violations of R.W.'s rights under the First Amendment and the
17 Equal Protection Clause of the [Fourteenth] Amendment." ECF No. 1 at 8.
18 Plaintiff's prayer for relief includes an injunction "lifting the trespass order related
19 to R.W., enjoining CBC from requiring R.W. to retake all courses to complete his
20 degree, and preventing CBC from requiring Plaintiff to obtain medical care and
21 make regular reports of his medical treatment as a condition of re-enrollment." *Id.*

1 at 9. He also asks for “all other relief the court deems just and equitable.” *Id.* at
2 10.

3 In a letter to R.W. dated July 8, 2021, Defendant Reagan stated that the
4 sanctions imposed on R.W.’s re-enrollment are no longer in effect. ECF No. 131
5 at 137–38.⁸ Defendants contend that the trespass order against R.W. is no longer
6 in place, he is not required to retake all courses already taken to re-enroll in the
7 nursing program, and the condition requiring him to see a mental health counselor
8 is null and void. ECF No. 128 at 15 (citing ECF No. 132 at 3). Defendants
9 therefore argue that R.W.’s claim for prospective injunctive relief is moot. ECF
10 No. 128 at 13–14 (citing *Mutter v. Rodriguez*, 700 Fed. App’x 528 (7th Cir.
11 2017)). In *Mutter*, the plaintiff’s § 1983 claim, stemming from his expulsion from
12 college for brandishing a firearm, was rendered moot once he became “eligible to
13 reinstate without court involvement.” 700 Fed. App’x at 531. The court also
14 dismissed the plaintiff’s separate claim that his expulsion left him “on the hook” to
15 the Air Force for a tuition scholarship because he sued individual defendants in
16 their official capacities, thus rendering damages unavailable to him. *Id.*

17 R.W. does not expressly contest that the sanctions against him have been
18 removed. Instead, he argues that the “purported withdrawal of sanctions . . . does

19 _____
20 ⁸ The parties dispute whether the sanctions were removed when R.W. did not
21 enroll in Winter Quarter 2018 or when Ralph Reagan sent the follow-up letter three
years later on July 8, 2021. See ECF Nos. 128 at 8–9, 135 at 5–6.

1 not remotely remedy the injuries arising from Defendants' unlawful conduct."

2 ECF No. 135 at 6. Separate from the removal of sanctions, R.W. alleges that he
3 also is seeking (1) reinstatement to the nursing program and (2) removal of
4 negative information on his academic records preventing his qualification for
5 financial aid. ECF No. 135 at 7–10 (citing *Flint v. Dennison*, 488 F.3d 816, 824
6 (9th Cir. 2017) (declining to dismiss the action as moot where former student's
7 records still contained evidence of disciplinary sanctions); *Constantine v. Rectors*
8 and *Visitors of Geo. Mason Univ.*, 411 F.3d 474, 496 n.15 (4th Cir. 2005) (ruling
9 that student who graduated could still pursue request that the school expunge a
10 failing grade from her record); *Ashokkumar v. Elbaum*, 932 F. Supp. 2d 996, 1007
11 (D. Neb. 2013) (finding that plaintiff had alleged a colorable § 1983 claim for
12 injunctive relief directing state officials to meaningfully restore her academic
13 standing)).

14 1. Reinstatement

15 CBC counters that R.W.'s request for reinstatement is not an available
16 remedy because the sanctions imposed by Mr. Reagan did not result in R.W.'s
17 suspension or expulsion. In reversing this Court's finding on qualified immunity,
18 the Ninth Circuit determined CBC's response to R.W.'s violent ideations "was not
19 suspension or expulsion from the College, but rather a process for re-enrollment in
20 a manner the College deemed safe." ECF No. 56 at 3. Defendants argue that this

1 statement by the Ninth Circuit is the “law of the case” and “because R.W. was not
2 expelled, reinstatement is not a proper remedy.” ECF No. 142 at 2–3.

3 The “law of the case” doctrine ordinarily precludes a court “from
4 reexamining an issue previously decided by the same court, or a higher court, in
5 the same case.” *Richardson v. United States*, 841 F.2d 993, 995 (9th Cir. 1988),
6 amended by 860 F.2d 357 (9th Cir. 1988). Here, the Ninth Circuit granted appeal
7 on the narrow issue of whether Defendants Reagan and Thornton were entitled to
8 qualified immunity. Accordingly, the court’s characterization of the sanctions at
9 issue is dicta, not binding authority. In other words, the nature of R.W.’s
10 disenrollment was not “decided explicitly or by necessary implication in [the]
11 previous disposition” for purposes of the law of the case doctrine. *Liberty Mutual
Ins. Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982). Accordingly, the “law of
12 the case” doctrine does not apply here, and the Court considers the appropriateness
13 of Plaintiff’s request for reinstatement.

15 The Ninth Circuit recognizes that “reinstatement constitutes prospective
16 injunctive relief” and is an appropriate remedy for suits against individual
17 defendants in their official capacity. *Doe v. Lawrence Livermore Nat. Laboratory*,
18 131 F.3d 836, 840, 842 (9th Cir. 1997). While R.W. was not officially suspended
19 from CBC’s nursing program, the nature of the trespass order, combined with the
20 strict, progressive schedule for the nursing program and the impact on his ability to
21 obtain financial aid, arguably constituted a de facto suspension. See ECF Nos. 37-
ORDER RESOLVING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 20

1 19 at 1, 34 at 1–2. Defendants may have removed the sanctions against R.W., but
2 his path to reenrollment in the nursing program remains uncertain. *See e.g.*, ECF
3 Nos. 131 at 36 (CBC Nursing Student Handbook notes that “[t]o remain in the
4 nursing program a 2.0 grade or higher must be attained in all major courses”), 133
5 at 3 (current CBC President Woods indicates that she would “seek the advice and
6 consent of the Board of Trustees” before waiving the requirements of the Nursing
7 Program Student Handbook as to R.W., specifically). Therefore, the Court finds
8 that reinstatement is an appropriate remedy that falls under the other forms of just
9 and equitable relief that Plaintiff seeks.

10 2. Removal of Failing Grades from R.W.’s Transcript

11 R.W. separately requests that Defendants remove negative information from
12 his academic records. ECF No. 135 at 8–9. Before the trespass order was issued
13 against R.W., he was “a student in good standing enrolled in the nursing program.”
14 *Id.* at 10. Following the disciplinary conduct at issue here, CBC “issued R.W.
15 zeroes in each of his classes,” rendering him “ineligible for federal financial aid . . .
16 at any college program.” *Id.* (citing ECF Nos. 37-4 at 4, 139 at 2). In *Flint*, the
17 Ninth Circuit determined a former student’s claims were not moot so long as his
18 record still contained evidence of disciplinary sanctions and the student was
19 seeking the expungement of any mention of the sanctions from his records. 488
20 F.3d at 824. Similarly, the Fourth Circuit determined that while the plaintiff’s
21 graduation from law school mooted most her claims for injunctive relief, her

1 request to expunge a failing grade from her record was not moot. *Constantine*, 411
2 F.3d at 496 n.15.

3 Here, R.W.’s complaint did not specifically request that Defendants remove
4 the zeroes from his academic transcript for Winter Quarter 2017. Nevertheless,
5 this remedy falls under his request for “all other relief the court deems just and
6 equitable.” ECF No. 1 at 10. This remedy is distinguishable from the plaintiff in
7 *Mutter* who was “on the hook” to the U.S. Air Force “for tuition it paid on his
8 behalf.” 700 Fed. App’x at 531. There, plaintiff’s economic injury was essentially
9 a request for damages that were unavailable to him under *Ex parte Young*. *Id.*
10 Here, the removal of failing grades from R.W.’s transcript is a permissible form of
11 relief that removes the Defendants’ imposed barrier that rendered him eligible for
12 prospective financial aid as opposed to an award for damages based on aid
13 previously denied to him. Current CBC President Rebekah Woods notes that R.W.
14 can seek reenrollment “without reference to the findings and sanctions imposed in
15 2017.” ECF No. 133 at 3–4. However, Ms. Woods does not state that R.W.’s
16 failing grades for Winter Quarter 2017 will be removed so that he may qualify for
17 financial aid going forward.

18 R.W.’s request for the removal of sanctions against him are not moot at this
19 point, regardless of whether the sanctions were removed this year or when he
20 failed to reenroll in 2018. R.W.’s request for reinstatement remains an appropriate
21

1 remedy because the Ninth Circuit’s characterization of R.W.’s disenrollment is
2 dicta and is not controlling in this case.

3 Furthermore, R.W.’s request to remove his negative academic information is
4 a meaningful form of relief that is not moot. Although R.W. did not specifically
5 request expungement of the failing grades in his complaint, this remedy is a form
6 of just and equitable relief that the Court can provide. *See Bayer v. Neiman*
7 *Marcus Group, Inc.*, 861 F.3d 853 (9th Cir. 2017) (for purposes of mootness,
8 “[t]he question is not whether the precise relief sought at the time the case was
9 filed is still available,’ but ‘whether there can be any effective relief.’” (quoting
10 *McCormack v. Herzog*, 788 F.3d 1017, 1024 (9th Cir. 2015))). While R.W.’s
11 failing grades may have arisen from his voluntary decision to seek treatment, a
12 material question of fact remains as to whether R.W.’s disenrollment from Winter
13 Quarter 2017 (and subsequent failing grades) equally stemmed from the imposition
14 of the trespass order and, with it, the inability to attend his classes.

15 Genuine issues of material fact remain regarding whether R.W.’s failing
16 grades were the result of his seeking treatment or the result of CBC’s trespass of
17 him. Accordingly summary judgment is not appropriate.

18 **B. Voluntary Cessation**

19 Plaintiff also argues that the facts surrounding Defendants’ voluntary
20 cessation of the sanctions at issue raises the strong possibility that the alleged
21 unlawful conduct will “arise again absent the imposition of an injunction.” ECF
ORDER RESOLVING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 23

1 No. 135 at 11. The voluntary cessation of challenged conduct moots a case “only
2 if it is ‘*absolutely clear that the allegedly wrongful behavior could not reasonably*
3 *be expected to recur.*’” *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222,
4 120 S. Ct. 722, 145 L. Ed. 2d 650 (2000) (quoting *United States v. Concentrated*
5 *Phosphate Export Assn., Inc.*, 393 U.S. 199, 203, 89 S. Ct. 361, 21 L. Ed. 2d 344
6 (1968)). The burden for the party alleging mootness is heavy, if not formidable.
7 *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (“The party asserting
8 mootness bears a ‘heavy burden.’”); *see also DeJohn v. Temple University*, 537
9 F.3d 301, 309 (3d Cir. 2008) (describing the burden of showing mootness as heavy
10 and formidable).

11 In *DeJohn*, the plaintiff challenged the university’s sexual harassment policy
12 as having “a chilling effect on his ability to exercise his constitutionally protected
13 rights.” *Id.* at 305. Temple University changed its policy “more than a year after
14 the commencement of litigation and then only near the end of discovery.” *Id.* at
15 309. The Third Circuit determined that the voluntary cessation of the original
16 policy did not moot plaintiff’s claim because the university’s decision to defend
17 the need for an unconstitutional policy raised a “‘reasonable expectation’” that it
18 would “reimplement its previous sexual harassment policy.” *Id.* (quoting *Los*
19 *Angeles County v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 59 L. Ed. 2d 642
20 (1979)).

1 Similar to *DeJohn*, Plaintiff argues that the removal of sanctions in this case
2 “occurred more than three years after this litigation commenced and almost two
3 years after this Court determined that Defendants violated R.W.’s First
4 Amendment rights as a matter of law.” ECF No. 135 at 13. Defendants counter
5 that R.W.’s sanctions “became defunct” when he did not reenroll in Winter Quarter
6 2018. ECF No. 131 at 4. However, in the letter addressed to R.W. on April 20,
7 2017, Mr. Reagan simply states that R.W.’s “sanctions are as follows: [(1)
8 successful re-enrollment in the nursing program, (2) participation in mental health
9 counseling, and (3) completion of a mental health evaluation in October of 2017].”
10 ECF No. 131 at 134. The letter does not state that the sanctions are contingent on a
11 particular reenrollment date. *Id.* It appears from the record that the sanctions were
12 not removed until July 2021, approximately three years after the events at issue,
13 after the Ninth Circuit’s decision was issued, and one month before Defendants
14 filed the instant motion.

15 The next issue is whether Defendants Ralph Reagan and Lee Thornton
16 reasonably could be expected to engage in the same allegedly wrongful behavior.
17 *See Adarand Constructors, Inc.*, 528 U.S. at 222 (requiring the party asserting
18 mootness to meet the heavy burden of demonstrating that the challenged conduct
19 cannot reasonably be expected to recur). Mr. Reagan and Mr. Thornton contend
20 that they are incapable of engaging in the same behavior because Mr. Reagan lacks
21 the same sanction authority that he once had and Mr. Thornton no longer works at
ORDER RESOLVING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 25

1 CBC. ECF No. 142 at 8–9. Defendants cite no authority for the argument that the
2 relevant inquiry for voluntary cessation is on the individual actors’ subsequent
3 authority rather than on the allegedly unlawful conduct. Moreover, CBC’s new
4 process for issuing sanctions,⁹ seemingly instituted years after this litigation
5 commenced, leaves open the possibility that Mr. Reagan may regain his original
6 sanction authority.

7 The Court finds that Defendants have not met the high standard to establish
8 mootness. *Rosebrock*, 745 F.3d at 971; *DeJohn*, 537 F.3d at 309 (3d Cir. 2008).

9 **C. Redressability**

10 In addition to mootness, Defendants argue that they cannot provide
11 redressability for the prospective relief sought because Lee Thornton no longer
12 works at CBC and Ralph Reagan lacks the authority to abrogate nursing program
13 requirements. ECF No. 128 at 15. The Court separately analyzes the current roles
14 and authority of Defendants Lee Thornton and Ralph Reagan.

15 1. Former President Thornton and Possible Substitution

16 Beginning in November 2017, approximately six months before Plaintiff
17 filed his complaint, Rebekah Woods became CBC’s President. ECF No. 133 at 1.
18 Lee Thornton served as the Interim President before her, but he “is now retired and
19 is no longer employed” by CBC. *Id.* Therefore, Defendants argue that Lee

20
21

⁹ See *supra* n.3 (citing ECF No. 131 at 1–2).

1 Thornton is incapable of providing the relief R.W. seeks. ECF No. 128 at 15. For
2 support, Defendants point to one case within the Ninth Circuit where the official's
3 connection to the challenged action was too attenuated to sufficiently redress the
4 plaintiff's injuries. *See id.* at 16 (citing *S.B. by & through Kristina B. v. Cal Dep't*
5 *of Educ.*, 327 F. Supp. 3d 1218, 1235 (E.D. Cal. 2018)). But in *S.B.*, the defendant
6 in question lacked "any direct connection to the enforcement of the California
7 Education Code such that any relief ordered against Brown would not redress
8 Plaintiff's injuries." 327 F. Supp. 3d at 1235–36. In this case, Lee Thornton was
9 directly involved in the conduct at issue by (1) upholding Ralph Reagan's trespass
10 order against R.W. on the Richland campus and (2) affirming the Student Conduct
11 Board's decision to uphold the sanctions imposed.

12 Outside of the Ninth Circuit, Defendants note that courts have barred
13 injunctive relief against parties who lost a connection to the plaintiff's claims. *See*
14 ECF No. 128 at 16 (citing *Randolph v. Rodgers*, 253 F.3d 342, 346 (8th Cir. 2001)
15 (injunctive relief not available against four individually named defendants
16 employed at a prison because plaintiff was transferred to a new prison);
17 *Ashokkuma v. Elbaum*, 932 F. Supp. 2d 996, 1010 (D. Neb. 2013) (individual
18 defendant who was no longer employed at university could not implement
19 plaintiff's requested injunctive relief)).

20 In response, Plaintiff argues that he is entitled to automatically substitute
21 current-President Rebekah Woods "in regard to the claims against Lee Thornton in
ORDER RESOLVING DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 27

1 his official capacity.” ECF No. 135 at 14. The Federal Rules of Civil Procedure
2 allow the automatic substitution of a public officer sued in an official capacity who
3 “dies, resigns, or otherwise ceases to hold office while the action is pending.” Fed.
4 R. Civ. P. 25(d). “The court may order substitution at any time, but the absence of
5 such an order does not affect the substitution.” *Id.* The decision to grant
6 substitution under Rule 25 is within the trial court’s sound discretion. *In re Bernal*,
7 207 F.3d 595, 598 (9th Cir. 2000).

8 Defendants counter that Lee Thornton “was no longer a ‘public officer’ at
9 the time the lawsuit was initiated” so Rule 25 does not allow for the substitution of
10 Rebekah Woods into the lawsuit now. ECF No. 142 at 7 (citing *Schlumpberger v.*
11 *Osborne*, No. 0:16-cv-78-SRN-TNL, 2019 WL 927322, *3 (D. Minn. Feb. 26,
12 2019)). The *Schlumpberger* court denied substitution in line with other
13 jurisprudence suggesting a Rule 25(a)(1) substitution “cannot be ordered ‘where
14 the person for whom substitution is sought died prior to being named a party.’”
15 2019 WL 927322, at *3 (citing *Lacy v. Tyson*, No. 1:07-cv-00381-LJO-GSA-PC,
16 2012 WL 4343837, at *2 (E.D. Cal. Sept. 20, 2012)). But the reason for denying
17 substitution in *Schlumpberger* and other cases like it can be distinguished from the
18 instant case, because “a dead man obviously cannot be named party defendant in
19 an action.” *Chorney v. Callahan*, 135 F. Supp. 35, 36 (D. Mass. 1955); *see also*
20 *Laney v. South Carolina Dep’t of Corrections*, No. CA 4:11-3287-JMC-TER, 2012

21

1 WL 4069680 (D.S.C. May 8, 2012) (“Obviously, a deceased person cannot be
2 served and respond to a lawsuit.”).

3 Unlike defendants who died prior to the filing of a lawsuit, Mr. Thornton
4 was not only served, but he also answered the complaint against him. Nowhere in
5 that answer does he dispute Plaintiff’s ability to sue him in his official capacity for
6 “claims seeking prospective, injunctive relief.” ECF No. 12 at 2. Therefore, this
7 Court is well within its discretion to allow for the substitution of Defendant
8 Rebekah Woods in her official capacity under Rule 25(d), which the Court does
9 allow.

10 2. *Assistant Dean Reagan’s Authority*

11 Separately, Defendants argue that Mr. Reagan “does not have the authority
12 to abrogate the nursing program requirements for R.W.” or to reinstate him “into
13 the nursing program.” ECF No. 128 at 15 (citing ECF No. 133 at 2–3); *see also*
14 *Boglin v. Board of Trustees of Alabama Agricultural & Mechanical University*,
15 290 F. Supp. 3d 1257, 1265 (N.D. Ala. 2018) (*Ex parte Young* exception did not
16 apply to board of trustees’ members who lacked authority to reinstate plaintiff’s
17 employment). In line with their mootness arguments, Defendants note that Mr.
18 Reagan “is no longer involved in issuing sanctions in cases where suspension
19 longer than ten days or expulsion is a possible outcome.” ECF No. 142 at 9 (citing
20 ECF No. 131 at 1). This contention is inconsistent with Defendants’ earlier
21 argument that R.W. was not suspended or expelled by Mr. Reagan in the first

1 place. Regardless, Defendants do not indicate whether Mr. Reagan could provide
2 R.W.'s other requested relief, such as removing the failing grades from R.W.'s
3 transcript. Additionally, Defendants contend that R.W. abandoned his claim
4 against Mr. Reagan by not rebutting Defendants' assertion that Mr. Reagan lacks
5 authority to provide the requested relief. ECF No. 142 at 7 (citing *Jenkins*, 398
6 F.3d at 1095 n.4). Despite Plaintiff's lack of argument on the issue, material
7 questions of fact remain as to (1) the current scope of Mr. Reagan's sanction
8 authority should the Defendants' unlawful conduct recur, (2) the likelihood that
9 CBC's prior sanction process will be reinstated to restore Mr. Reagan's full
10 sanction authority, and (3) whether Mr. Reagan has the ability to expunge negative
11 information from R.W.'s academic records.

12 To summarize, Defendants fail to demonstrate that Plaintiff's § 1983 claims
13 against Mr. Thornton and Mr. Reagan are moot. Multiple remedies remain for
14 Defendants' unlawful conduct, including reinstatement and expungement of
15 negative academic information. Defendants' assertion that the sanctions became
16 defunct years ago is not supported by the record. Moreover, the eleventh-hour
17 changes to CBC's sanction policies do not convince the Court that the unlawful
18 conduct cannot reasonably be expected to recur. By her own admission, CBC
19 President Rebekah Woods may be capable of redressing Plaintiff's injuries, and
20 she can be substituted as a party-defendant in her official capacity for Lee
21 Thornton in his official capacity. As to Mr. Reagan, material questions of fact

1 regarding the scope and changing nature of his authority render summary judgment
2 inappropriate.

3 **III. Free Speech in the Higher Education Setting**

4 This Court already granted R.W.’s motion for summary judgment regarding
5 his First Amendment claim brought under § 1983. *See* ECF No. 83. After the
6 Court’s order issued, the United States Supreme Court decided *Mahanoy*. 141 S.
7 Ct. 2038 (2021). The *Mahanoy* decision notes that certain special characteristics
8 of public schools give “schools additional license to regulate speech . . . that takes
9 place off campus.” 141 S. Ct. at 2045. In reaching this conclusion, the Court
10 noted its prior reasoning that “schools have a special interest in regulating speech
11 that ‘materially disrupts classwork or involves substantial disorder or invasion of
12 the rights of others.’” *Id.* (quoting *Tinker v. Des Moines Independent Community
School Dist.*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)). In light of
14 *Mahanoy*, Defendants ask this Court to reconsider its prior ruling that *Tinker* does
15 not apply in this case. ECF No. 128 at 17–18.

16 At the outset, CBC concedes that the *Mahanoy* decision “did not explicitly
17 address the question of whether *Tinker* applied in the collegiate setting.” *Id.* at 18.
18 Nevertheless, Defendants argue that Justice Alito’s concurrence “leaves open that
19 possibility,” by recognizing the following:

20 This case does not involve speech by a student at a public
21 college or university. For several reasons, including the
age, independence, and living arrangements of such

1 students, regulation of their speech may raise very
2 different questions from those presented here. I do not
3 understand the decision in this case to apply to such
4 students.

5 141 S. Ct. at 2049, n.2 (Alito, J., concurring).

6 As R.W. points out, Justice Alito's concurrence "strongly implies the
7 opposite" of Defendants' contention. ECF No. 135 at 16. The recognition that
8 "age" and "independence" are different in a university setting suggests that
9 university students enjoy more First Amendment protections than school-age
10 children. This is especially true given the *Mahanoy* majority's conclusion that the
11 special characteristics of the school environment includes "the fact that schools at
12 times stand *in loco parentis*, i.e., in the place of parents." *Id.* at 2045 (citing *Bethel*
13 *School Dist. No. 403 v. Fraser*, 478 U.S. 675, 684, 106 S. Ct. 3159, 92 L. Ed. 2d
14 549 (1986)). The doctrine of *in loco parentis* does not apply in the university
15 setting for independent, young adults. Moreover, the applicability of the *in loco*
16 *parentis* doctrine to a public high school setting in *Mahanoy* did not prevent the
17 Court from ultimately concluding that the school violated the plaintiff-student's
18 First Amendment rights regarding her speech off campus. *See id.* at 2047 (noting
19 that the student's speech, though vulgar, "did not amount to fighting words" and
20 was transmitted "through a personal cellphone, to an audience consisting of her
21 private circle of Snapchat friends").

1 Not to be dissuaded, Defendants cite to other opinions that do apply the
2 *Tinker* analysis in a collegiate setting. ECF No. 128 at 18–20 (citing *Healy v.*
3 *James*, 408 U.S. 169, 180, 189–91, 92 S. Ct. 2338, 33 L. Ed. 2d 266 (1972); *Doe v.*
4 *Valencia Coll.*, 903 F.3d 1220, 1227 (11th Cir. 2018); *Keefe v. Adams*, 840 F.3d
5 523, 531 n.6 (8th Cir. 2016); *Castle v. Marquardt*, 632 F. Supp. 2d 1317, 1335–36
6 (N.D. Ga. 2009); *Murakowski v. Univ. of Delaware*, 575 F. Supp. 2d 571, 591 (D.
7 Del. 2008)). However, these cases do not align with the facts in this case.

8 In *Healy*, the Court made clear that, unlike K-12 schools, “the precedents of
9 this Court leave no room for the view that . . . First Amendment protections should
10 apply with less force on college campuses than in the community at large,”
11 especially given that the “college classroom . . . is peculiarly the ‘marketplace of
12 ideas.’” 408 U.S. at 180 (quoting *Keyishian v. Board of Regents*, 385 U.S. 589,
13 603, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967)). The Court did conclude that student
14 associations “need not be tolerated where they infringe reasonable campus rules,
15 interrupt classes, or substantially interfere with the opportunity of other students to
16 obtain an education.” *Id.* at 189. However, the associational conduct at issue in
17 *Healy* was occurring on campus, which is distinguishable from this case where
18 R.W. made statements privately to his doctor while seeking medical treatment.

19 The circuit opinions that Defendants cite also contain important distinctions
20 from the facts of this case. In *Doe*, the plaintiff’s alleged stalking behavior
21 invaded the victim’s rights “to be secure and to be let alone . . . from persistent

1 unwanted advances and related insults from another student.” 903 F.3d at 1229–
2 30. R.W., in contrast, did not physically invade anyone else’s rights. He made the
3 comments while seeking medical treatment.

4 In *Keefe*, the plaintiff was removed from a nursing program after receiving
5 complaints from fellow students about unprofessional posts on his personal
6 Facebook page. 840 F.3d at 525. Relevant there, the court found that plaintiff’s
7 “threatening statements toward his colleagues had a direct impact on the students’
8 educational experience.” *Id.* at 532. Even after the plaintiff was confronted by
9 administrators, “he evidenced no remorse for his actions.” *Id.* at 533. Here, there
10 is no evidence that R.W.’s statements had any impact on his fellow students’
11 education experience, and R.W. expressed concern about his violent thoughts,
12 which this Court already found did not constitute true threats, to his private
13 healthcare provider, not on a public forum such as Facebook or Snapchat. He also
14 voluntarily submitted himself to inpatient treatment to address the problem and the
15 Lourdes crisis responder, Araceli Perez, noted that R.W. “seemed to be very
16 remorseful for his thoughts.” ECF No. 137-1 at 4.

17 The district court decisions cited by Defendants also reveal notable
18 differences from the conduct at issue here. First, the *Castle* case involved a
19 student’s retaliation claim based on her allegedly unlawful suspension for filing a
20 complaint about her instructors. 632 F. Supp. 2d at 1322. Applying *Tinker*, the
21 court concluded that the speech did not cause a “substantial disruption or material

interference with school activities.” *Id.* at 1336 (quoting *Tinker*, 393 U.S. at 514). Here, the substantial disruption on CBC’s campus stemmed from CBC’s own decision to directly inform the instructors who were the subjects of R.W.’s troubling thoughts. ECF No. 37-10 at 2. R.W.’s private remarks to his doctor differ greatly from the student’s direct interaction with university personnel in *Castle* or the posts made on a public website in *Keefe*.

Similarly, the location where the speech originated in *Murakowski* is distinguishable from this case. *See* 575 F. Supp. 2d at 574 (challenging the University of Delaware’s disciplinary action after plaintiff posted allegedly threatening comments on a website maintained on the University’s server). There, the court, in analyzing whether the message constituted a “true threat,” noted that the recent events unfolding with the Virginia Tech shooting likely “factored into the University’s response.” *Id.* at 592. Nevertheless, the court ruled in favor of the student because the university failed to show that the student’s articles “created disruption or significantly and adversely impacted the college community.” *Id.*

Neither the Ninth Circuit nor the Supreme Court has signaled that *Tinker*’s “substantial disruption” test applies in university settings. In *Oyama v University of Hawaii*, 813 F.3d 850 (9th Cir. 2015), the court’s ruling suggests the opposite. *See id.* at 863 (noting that (1) the university’s “institutional responsibility,” and not the pedagogical concerns of the student speech doctrine, is the reason the University regulated plaintiff’s speech and (2) the “student speech doctrine fails to

ORDER RESOLVING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT ~ 35

1 account for the vital importance of academic freedom at public colleges and
2 universities”). Defendants counter that the speech in *Oyama*, “while perhaps
3 distasteful or controversial, is a far cry from the threats of violence made by R.W.
4 to attack three of his instructors.” ECF No. 142 at 10–11. This Court already
5 decided that there “is no evidence supporting that R.W. ever intended or ever
6 expected that the statements that he made to his doctor for the purposes of medical
7 treatment would reach his instructors and intimidate them.” ECF No. 83 at 15.
8 The cases cited by Defendants do nothing to disrupt that finding.

9 **CONCLUSION**

10 The Court finds that Defendant CBC is entitled to immunity under the
11 Eleventh Amendment for R.W.’s §1983 claim. However, Defendants Ralph
12 Reagan and Lee Thornton are not entitled to the same immunity because the *Ex*
13 *parte Young* doctrine applies. Defendants’ assertion that there is no “ongoing
14 violation” is inaccurate given that R.W. has not been reinstated and his transcript
15 still reflects negative information stemming from his disenrollment. The
16 circumstances surrounding Defendants’ “voluntary cessation” of the unlawful
17 sanctions suggests that the challenged conduct may recur. Defendant Lee
18 Thornton’s retirement does not preclude redressability because Rebekah Woods is
19 substituted as defendant under Federal Rule of Civil Procedure 25. As to Ralph
20 Reagan, material questions of fact exist surrounding (1) his ability to provide
21 redressability in the form of removing R.W.’s negative academic information and
ORDER RESOLVING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 36

1 (2) the reach of his sanction authority if the unlawful conduct recurs. Lastly, the
2 Supreme Court's decision in *Mahanoy* does not provide a basis for reexamining
3 the Court's previous finding on liability.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Defendants' Motion for Partial Summary Judgment, **ECF No. 128**, is
6 **GRANTED IN PART** with respect to Defendant Columbia Basin College only.
7 Plaintiff's claim for injunctive relief under § 1983 against Defendant Columbia
8 Basin College is **DISMISSED WITH PREJUDICE**.

9 2. The remainder of Defendants' Motion for Partial Summary Judgment,
10 **ECF No. 128**, is **DENIED**.

11 3. Rebekah Woods is hereby substituted as party defendant in her official
12 capacity for Defendant Lee Thornton in his official capacity. Mr. Thornton remains
13 a party defendant in his individual capacity in regard to Plaintiff's disability
14 discrimination claim under Washington State law.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
16 Order, enter judgment for Defendant Columbia Basin College only regarding
17 Plaintiff's § 1983 claim for injunctive relief, amend the caption as noted above, and
18 provide copies to counsel.

19 **DATED** November 19, 2021.

20 _____
21 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge